

T0: POWELL & OAKES, INC.
Master Court Reporters
806 Investors Trust Building
Indianapolis, Indiana, 46204

US EPA RECORDS CENTER REGION 5



436324

RE: Indiana Rules of Procedure, Trial Rule 30(E) and/or Federal Rules of Civil Procedure.

After having read my deposition, I wish to make the following changes and/or corrections in my answers:

PAGE 13 LINE 17

CHANGE SUPPOSER

TO PROPOSER

REASON FOR CHANGE SPELLING ERROR

PAGE 26 LINE 14 & 17

CHANGE LEACHAGE

TO LEACHATE

REASON FOR CHANGE SPELLING ERROR

PAGE 53 LINE 17

CHANGE My

TO The

REASON FOR CHANGE IT WAS NOT MY AGREEMENT IT WAS ONE MADE BY SOMEONE ELSE

PAGE 66 LINE 18

CHANGE JOH

TO JOHN

REASON FOR CHANGE SPELLING ERROR

PAGE 78 LINE 21

CHANGE DETINTING

TO DETINNING

REASON FOR CHANGE SPELLING ERROR

PAGE 119 LINE 18

CHANGE DETINTING

TO DETINNING

REASON FOR CHANGE SPELLING ERROR

PAGE 122 LINE 20 & 22

CHANGE ENCLOSURE

TO CLOSURE

REASON FOR CHANGE SPELLING ERROR

PAGE 135 LINE 4

CHANGE INFECTORS

TO VECTORS

REASON FOR CHANGE SPELLING ERROR

PAGE LINE

CHANGE

TO

REASON FOR CHANGE

Bruce H. Palin

(Signature of deponent)

STATE OF INDIANA STREAM POLLUTION CONTROL BOARD

SPC-17 LIQUID WASTE REMOVAL RECORD
HAULER REPORT

2. For month of February, 1982

City _____ State _____

County	Zip
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Operator Permit No

11. Signature (Authorized Representative) Darrell F. Fager 12. Date March 12, 1982

Operator Permit No. _____

SPC-17 LIQUID WASTE REMOVAL RECORD HAULER REPORT

2. For month of February, 1982

11. Signature (Authorized Representative) Darrell F. Ingels 12. Date March 12, 1982

red prehearing
conf. 11/28/90

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

COMMISSIONER, INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT,

Complainant,

v.

GARY DEVELOPMENT COMPANY, INC.,

Respondent.

CAUSE NO. 90-W-J-428
(B-1357)

RESPONDENT'S STATEMENT OF PROBABLE
DISPUTED ISSUES OF FACT OR LAW

The Respondent Gary Development Company, Inc. pursuant to the Order issued on November 16, 1990, by the Administrative Law Judge sets forth the following as issues of fact or law which will be or might be disputed in this cause:

1. The Complainant did not observe leachate discharging from GDC's facility into the Grand Calumet River on August 1, 1990. .

2. Any surface water alleged to be discharging from GDC's facility does not constitute a "point source discharge of pollutants to waters of the state."

3. The discharging of surface waters on GDC's facility to the Grand Calumet River has been approved by the IEMB's approval of GDC's operating permit and construction permit.

4. The surface waters on GDC's site does not constitute leachate because those waters do not pass through or emerge from solid waste, but instead are produced from rainfall, from groundwater infiltration from off-site through the GDC's north wall and

from runoff from neighboring properties. Secondly, the surface waters on GDC's site do not constitute leachate because they do not contain soluble, suspended, immiscible, or miscible materials removed from solid waste disposed of at GDC's facility. The Complainant on August 1, 1990, never collected and analyzed surface waters to determine whether such on-site water contained materials removed from solid waste necessary to classify it as "leachate."

5. Complainant on August 1, 1990, did not sample and analyze the water of the state of Indiana known as the Grand Calumet River near GDC's facility. Thus, there exists no threat of pollution in the mixing zone to the aquatic environment of the Grand Calumet River or to human health.

6. The collection of rainwater, off-site groundwater and off-site runoff water in the area at GDC's facility which is currently below the Indiana Environmental Management Board's approved final site elevation is caused by and is a result of the following actions and non-actions by the Indiana Environmental Management Board (IEMB), the Indiana Department of Environmental Management (IDEM) and the Indiana Solid Waste Management Board (ISWMB):

- A. In order to continue the final construction of its facility pursuant to the terms and requirements of a Settlement Agreement in Cause No. N-53 approved by the Indiana Environmental Management Board on February 28, 1983, GDC submitted to the IEMB on November 15, 1985,

to the IEMB Hearing Officer in Cause No. N-146 on June 5, 1986, and to the IDEM Commissioner on August 29, 1989, the Report of Soil Borings done along the west wall of GDC's facility during 1985. Although GDC believes that the permeability testing from these soil borings were within the permeability for clay established as being acceptable by the 1983 Settlement Agreement and would allow GDC to construct a further portion of the clay perimeter wall along its north side, the IEMB and IDEM have failed to respond regarding the acceptability of the results of these soil borings.

- B. The Settlement Agreement in Cause No. N-53 approved by the IEMB on February 28, 1983, provided that GDC's operating permit and amended construction permit would last for a period of two years to March 1, 1985. Prior to March 1, 1985, GDC submitted to the IEMB an application for renewal of its sanitary landfill operating permit. The IEMB and the IDEM have failed to issue to GDC any determination on its 1985 renewal application.
- C. On August 29, 1989, GDC by its counsel filed with the Commissioner of the IDEM a Notice of Suspending Operations and a Petition for Variance under I.C. 13-7-7-6. Therein, GDC advised the Commissioner of the agency's failure to respond to the 1985 soil boring results and its failure to issue a determination on the

1985 permit renewal application; and additionally, notified the Commissioner of the existence of the fill area which remains below the approved site elevations. GDC requested a variance from the new Indiana Solid Waste Regulations adopted in August, 1988, for the limited purpose of completing the remaining low area by filling it with nonhazardous solid waste. On December 11, 1989, GDC by counsel filed a Request for Hearing on its Petition for Variance. The Commissioner, the IDEM and the ISWMB have failed to issue a determination on the Petition for Variance and have failed to schedule a hearing regarding the Petition.

PARR RICHEY OBREMSKEY & MORTON

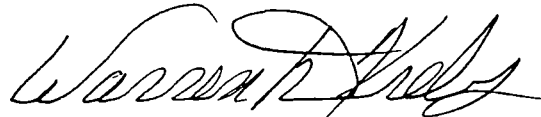
Attorneys for Gary Development
Company, Inc.

By 
Warren D. Krebs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Respondent's Statement of Probable Disputed Issues of Fact or Law has been served upon the following by personal service on this 28th day of November, 1990:

Harinder Kaur
Office of Legal Counsel
Indiana Department of
Environmental Management
105 South Meridian Street
Indianapolis, IN 46225



Warren D. Krebs

PARR RICHEY OBREMSKEY & MORTON
121 Monument Circle
Suite 500
Indianapolis, IN 46204
Telephone: (317) 269-2500

Summary
Adoption of Settlement Agreement
and Recommended Agreed Order

On February 16, 1982, the operating permit renewal and a construction plan permit amendment were issued to Gary Development, Inc.

On March 11, 1982, Gary Development, Inc. appealed the permit conditions in both approvals and an administrative hearing was set to resolve the appeal.

Attached is the most current draft of the Agreed Order available at the time of mailing to EMB members. It is expected that minor changes will be made to paragraphs 7b, 7c and 9 prior to the February 18, 1983, EMB meeting. A final draft of the order with appropriate signatures is expected to be presented at the February Board meeting.

Attachment
BHPalin/rlk

STATE OF INDIANA)
) SS: BEFORE THE ENVIRONMENTAL MANAGEMENT
COUNTY OF MARION) BOARD OF THE STATE OF INDIANA

IN THE MATTER OF)
GARY DEVELOPMENT, INC.,)
) Petitioner,)
) v.) CAUSE NO. N-53
)
THE ENVIRONMENTAL)
MANAGEMENT BOARD OF)
THE STATE OF INDIANA,)
) Respondent.)

SETTLEMENT AGREEMENT AND
RECOMMENDED AGREED ORDER

Comes now Petitioner, Gary Development, Inc., by counsel and by Larry Hagen, Vice President and General Manager; and comes now Respondent, the Indiana Environmental Management Board ("EMB"), by Linley Pearson, Attorney General, by Mathew Scherschel, Deputy Attorney General. The parties show the Hearing Officer that they have resolved their differences and ask the Hearing Officer to recommend an order to EMB in accordance with the terms and conditions set forth in Part II below.

I. HISTORY AND BACKGROUND

In early 1973, Petitioner began to explore developing a sanitary landfill in a mined-out, water-filled, sand pit in Gary, Indiana (hereafter called the "site"). On May 15, 1973, The Indiana Stream Pollution Control Board ("SPCB") approved Petitioner's proposal to dewater the sand pit. On June 19, 1973, SPCB granted Petitioner Construction Permit SW133, thereby allowing preparatory construction work for a sanitary landfill to begin.

On August 29, 1974, the State conducted its final inspection of the site which led to SPCB's granting final approval to Petitioner to commence sanitary landfill operations. The landfill began accepting solid waste for disposal in September, 1974. On February 20, 1975, SPCB sent Petitioner its Operating Permit, No. 45-2.

On May 20, 1980, SPCB approved an Agreed Order negotiated between Petitioner and SPCB staff. This Order required that Petitioner submit within 180 days of May 20, 1980, an application for a modification of its original construction permit. This application was timely submitted to SPCB on November 14, 1980.

On February 16, 1982, the Indiana Environmental Management Board ("EMB": in the interim, EMB replaced SPCB as the Indiana agency responsible for landfill permits) notified Petitioner by two nearly identical letters (hereafter called the "February 16, 1982 letter"), indicating that its Operating Permit No. 45-2 had been renewed and that its revised construction plans submitted November 14, 1980, had been approved, both subject to nine conditions. Petitioner thereafter filed a petition for hearing, contesting the imposition of these nine conditions.

Since that time the parties have negotiated the agreement set forth in Part II below, resolving the issues in dispute. The parties request that the Hearing Officer recommend that EMB enter the provisions of Part II below as an Agreed Order in Cause No. N-53.

c. Any required leachate collection system shall be installed in compliance with the amended construction permit.

3. Condition No. 5 in the February 16, 1982 letter regarding the discharge of water from the site into the Grand Calumet River or other waters of the State of Indiana is deleted in its entirety.

4. Condition No. 6 in the February 16, 1982 letter is deleted and replaced by the following:

It is not necessary that Petitioner install the seepage collection pond detailed on page seven of Petitioner's Engineering Plan. Petitioner agrees that no solid waste will be deposited in "standing water;" the phrase "standing water" shall not be construed to mean de minimus amounts of water or small rain-filled puddles.

5. Condition No. 7 in the February 16, 1982 letter is deleted and replaced by the following:

The Clay Perimeter Seal along the southside of the site shall be constructed to an elevation of 589.7 MSL and shall be at least 10 feet wide. The parties expressly agree that the portion of Petitioner's landfill located at the southeastern portion of the site which is completed and at final grade as of December 14, 1982, will not be affected by this requirement.

6. Condition No. 8 in the February 16, 1982 letter is deleted and replaced by the following:

The four on-site monitoring wells will be sampled on a quarterly basis. The sampling months are January, April, July, and October, with samples to be taken at the end of each month and analyzed.

a. Results of these tests shall be submitted to staff by the end of the following month. The parameters to be tested are chloride,

II. RECOMMENDED AGREED ORDER

It is expressly agreed and understood that the provisions of this Recommended Agreed Order constitute a modification of Petitioner's modified Construction Permit No. SW133 and Operating Permit No. 45-2. To the extent that this Recommended Agreed Order is inconsistent with these two permits; the drawings and narrative submitted on November 14, 1980; or the State's February 16, 1982 letter, the provisions below shall supercede such inconsistent provisions, and shall govern construction and operations at the site from the date this Recommended Agreed Order is approved by EMB. (This date is hereafter called "the effective date of this Order.")

1. Condition No. 1 in the February 16, 1982 letter, to wit: Sandy, granular material under the unified soil classification SW and SP will not be used for daily cover at the site, remains unchanged.

2. Condition No. 4 in the February 16, 1982 letter is deleted and replaced by the following:

Petitioner shall notify a staff member of the Indiana Division of Land Pollution Control (hereafter called "staff") by phone at least seven days in advance of the installation of any required leachate collection system on-site, to allow staff to inspect such installation.

a. After such notification, Petitioner may install the system on the appointed day at the appointed hour, or as soon thereafter as weather permits, whether or not staff is present.

b. If staff is not present for such installation, Petitioner shall document with photographs and narrative that the installation complies with Petitioner's amended construction permit.

required unless Staff identifies a significant infiltration of liquid as discussed in subparagraph 7c.

c. If the test results show that the permeability of the west perimeter wall is greater than 1.0×10^{-6} centimeters (i.e. 1.0×10^{-5} , 1.0×10^{-4} , etc.); or if Staff identifies a significant infiltration problem involving a concentrated flow of liquid into the site through the west wall or emanating from an area of deposited solid waste along that wall, then it is agreed that further negotiations between the parties will be required to determine what remedial action, if any, must be undertaken along the west wall. If the parties are unable to reach an agreement as to such remedial measures, if any, within 60 days of (i) the submission of the test results to the State, or (ii) the date a significant infiltration of liquid, Staff notifies Petitioner in writing of a finding of the issue of what remedial action may be required shall be submitted to the Hearing Officer for hearing and decision.

d. Until the soil boring tests are completed with satisfactory results in accordance with subparagraphs "a" and "b" above; or until an agreement is approved, or order entered pursuant to subparagraph "c" above, Petitioner agrees not to construct any further portions of the clay perimeter wall around the site.

i. If said test results are satisfactory in accordance with subparagraph 7b, and no significant infiltration of liquid is identified in accordance with subparagraph 7c, then construction of the remaining portions of the clay perimeter wall shall proceed in the same manner as the construction of the west wall so as to ensure a permeability factor at least equivalent to the test results for the west wall and to ensure that infiltration of liquid into the site through these newly constructed walls does not occur. In this event, Petitioner will submit narrative to staff describing the method used to construct the west wall and will document the construction of the remaining portions of the clay perimeter wall with pictures and narrative to ensure consistent construction practices.

ii. If said test results are unsatisfactory, or a significant infiltration of liquid is identified in accordance with subparagraph 7c, the parties will attempt to negotiate an acceptable alternative for the construction of the remaining portions of the clay perimeter wall, or failing an agreement, submit the matter to the Hearing Officer for hearing and decision.

chemical oxygen demand, total hardness, total iron, and total dissolved solids.

b. Petitioner agrees to locate and reactivate or replace the one monitoring well shown in its construction plans to be located along the eastern boundary of the site, if it is physically possible to do so.

7. The modified construction plans approved February 16, 1982, called for compaction of the clay perimeter wall around the site and testing the clay used for constructing this wall in accordance with the 90% Standard Proctor Density Test. Petitioner has found it technically and economically impractical to utilize this test. Respondent has agreed to substitute for this test any test acceptable to staff which will accurately portray the permeability of the clay perimeter wall. Accordingly, Conditions two and three of the February 16, 1982, letter are deleted and replaced with the following:

a. Within 45 days of the effective date of this Order, or if weather conditions prevent taking the borings within this time period, as soon thereafter as weather permits, Petitioner will have four soil borings (which may be drilled at an angle) taken from the site's west wall, at random locations along the wall, with split spoon samples taken at five foot depth intervals in each boring. Blowcounts will be recorded for each split spoon sample taken. The soil boring team will visually inspect the split spoon samples taken from each hole drilled and keep a log of their observations to include any identifiable irregularities or voids encountered during drilling. A total of five Shelby tube samples shall be taken from the borings. The Shelby tube samples will be subjected to a hydraulic conductivity test to ascertain the samples' permeability. Test results will be forwarded to staff within 15 days of their receipt by Petitioner. Staff shall be notified at least seven days in advance of any such boring, and will be given an opportunity to attend and view the drilling. Staff shall not interfere with such operations.

b. If the test results show the permeability of the clay wall to be 1.0×10^{-6} centimeters per second or less (i.e. 1.0×10^{-7} , 1.0×10^{-8} , etc.), then no remedial action for the west clay perimeter wall will be

compliance with this Agreed Order, and Petitioner's modified construction permit and operating permit.

d. It is the parties' intention that other "special wastes" of similar quality, quantity and composition as; and other "special wastes" presenting similar environmental hazards as, the above-listed special wastes will be considered for disposal at the site. The decision whether to allow "special wastes" in addition to those listed above to be deposited at Petitioner's site, must be made by staff on a case-by-case basis after considering the physical and chemical composition of the proposed waste as well as current operations at the site. Although it is impossible to make any guarantees in advance, staff agrees in principle that, given satisfactory operations and construction at the site in compliance with this Order; Operating Permit 45-2; and the modified construction plans approved February 16, 1982, waste streams with similar chemical and physical composition, and waste streams presenting similar environmental hazards as the special wastes listed in subparagraph "b" above, will be considered suitable for disposal at the site.

e. The parties agree that materials such as debris, wood, construction refuse, steel, etc.; "coal ash" including fly ash and bottom ash (i.e. the resultant "ash" from coal burning); may be disposed of at the site without any special permission letters.

f. Petitioner agrees to submit a quarterly report to staff setting forth the types and amounts of "special wastes" disposed of at the site. These reports will be due the same day for the same period as the monitoring well reports referred to in paragraph 6 above.

g. Finally, the parties agree to cooperate in good faith in exploring the possibility of depositing the Georgia Pacific paper sludges and municipal treatment plant sludges at the site.

9. The parties agree that Petitioner's Operation Permit shall last for a period of two years from the effective date of this Agreed Order. The renewal of this Operation Permit or the decision of whether to grant or renew special permission letters referred to in paragraph 8b, 8c and 8d above, shall be based upon Petitioner's compliance with this Agreed Order, Petitioner's modified construction permit and operating permit and IND. CODE § 13-7. For the purposes of this Agreed Order,

8. Condition nine of the February 16, 1982, letter is deleted and replaced by the following:

a. Petitioner's landfill will not be excluded from consideration as, and will be considered, one of the several sanitary landfills in Indiana which are satisfactory repositories for special or "hazardous waste" as defined in 320 I.A.C. 5-2-1(19) (1982 Cum. Supp.) (hereafter called "special waste"). The parties specifically agree that no "hazardous waste" as defined and identified in 320 I.A.C. 4-3 (1982 Cum. Supp.) (hereafter called "RCRA hazardous waste") shall be deposited at Petitioner's landfill after the effective date of this Order.

b. Petitioner shall be permitted to continue receiving the following "special wastes" from the effective date of this Order until further action of the Board or Staff:

1. U.S. Reduction Dust;
2. Asbestos fill from Borg-Warner and Amoco Oil (which waste streams were subject to Special Permission letters dated 5/17/77 and 5/14/80, respectively);
3. Corn Starch and carbon filters from American Maize Products Company (which waste streams were subject to a Special Permission letter dated 2/20/76);
4. The following steel mill sludges from J & L Steel Corporation: the Central Treatment Plant Sludge, the Terminal Treatment Plant Sludge, and the Sludge from the 6 Stand Oil Recovery Unit.

c. After the effective date of this Order, staff will send a letter to the generators of the special wastes listed in subparagraph b above, requesting that the generators submit further information regarding the nature of the waste streams identified in subparagraph 8b above, to staff within 60 days of receipt of such letter; it is expressly agreed that this 60 day period will be extended by staff for good cause shown. Staff will analyze such updated information, make a final determination whether these listed special wastes may continue to be disposed of at the site, and shall promptly notify the generator of the waste and Petitioner of its decision. Any such decision shall constitute a "final action" for which Petitioner may file a Petition For Hearing before the Board pursuant to IND. CODE §§ 4-22-1 (1982) and 13-7-11-3 (1982). Any special permission letters issued for these listed wastes shall last one year. Renewal of such letters will be granted if the materials do not change significantly in quality or quantity, and if Petitioner's operation of the site is in

Indiana Environmental Management
Board

By _____
Ralph Pickard, Technical
Secretary

Date: _____

it is agreed that noncompliance with this Agreed Order, Petitioner's modified construction permit and operating permit and IND. CODE § 13-7 shall not include (1) any de minimus or insignificant variations from the Agreed Order and/or Petitioner's modified construction permit and operating permit, and/or (2) any inspection report which contains demerits, but which still shows an "acceptable" rating. Compliance with this Agreed Order, Petitioner's modified construction permit and operating permit and IND. CODE § 13-7 shall be shown by an acceptable rating on 60% or more of the inspection reports in any 12 month period.

Petitioner, Gary Development,
Inc.

INDIANA ENVIRONMENTAL MANAGEMENT
BOARD

By Lawrence H. Hagen
Lawrence Hagen, Vice
President & General Manager

Technical Recommendation

Date: FEB. 2, 83

By _____
David D. Lamm, Director
Division of Land Pollution
Control

Date: _____

By John M. Kyle III
John M. Kyle III

Approved For Legality And Form

Linley E. Pearson
Attorney General of Indiana

By E. Victor Indiano
E. Victor Indiano

By _____
Mathew S. Scherschel
Deputy Attorney General

Date: _____

Barnes & Thornburg
Attorneys for Petitioner

Recommendation For Adoption

Date: February 8, 1983

By _____
Hearing Officer

Date: _____